UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19

SERVICE MANAGEMENT GROUP of Alaska, Inc.

Employer

and Case 19-RC-14831

UNITE HERE! LOCAL 878

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.[1] Upon the entire record[2] in this proceeding, the undersigned makes the following findings and conclusions:[3]

I. Summary

The Employer is an Alaska Corporation which manages a number of public facilities in Alaska. The Petitioner seeks to represent a unit of food and beverage personnel at the Egan Convention Center (Egan) in Anchorage, Alaska. The Employer contends that this single location unit is inappropriate and must include the food and beverage personnel at the George M. Sullivan Arena (Sullivan). The only locations at issue in this matter are these two facilities. The parties do not dispute the appropriateness of a unit consisting of food and beverage employees.

Based on the record evidence and arguments presented by the parties, I conclude that the Employer did not rebut the Board's single facility presumption which applies in cases of this nature. Accordingly, I shall direct an election in the unit consisting of all full and part time

---

[1] Pursuant to Section 102.62(c) of the Board's Rules and Regulations, I approved the parties' April 24, 2006 agreement to a Full Consent Election Agreement, providing that any contested issues arising from the question concerning representation in this case will be resolved by the Regional Director after hearing, and that all rulings and determinations made by the Regional Director will be final, with the same force and effect as if issued by the Board.

[2] Employer and Petitioner filed timely briefs, which were duly considered.

[3] The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. The labor organization involved claims to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

bartenders, concession employees, catering employees, cooks, banquet servers, and dishwashers employed by the Employer at the Egan Convention Center facility in Anchorage, Alaska.

Below, I have provided a section setting forth the evidence as revealed by the record in this matter and relating to background information about the Employer's operations; control over daily operations and labor relations; employee skills, functions and working conditions; employee interchange; bargaining history; and geographical separation of the facilities. Following the evidence section is a restatement of the parties' positions, my analysis of the applicable legal principles in this case, and a section directing an election in this matter.

II. EVIDENCE

A. Background Information on the Employer's Operations

The Employer is a wholly owned subsidiary of Service Management Group (SMG), a Pennsylvania partnership. SMG is a facilities management company that specializes in the management of public facilities for governmental entities. It operates in public buildings in over 190 locations. The Employer is SMG's Alaska operation. The Employer operates basically five facilities in Alaska. These include the Anchorage facilities of Egan, Sullivan, the Ben Boeke Ice Arena and the Dempsey Anderson Ice Arena, and a location in Fairbanks, Alaska. As noted above, the only two facilities at issue are Egan and Sullivan. The two ice arenas are run by the management and employees of Sullivan with the exception of some contracted services at Dempsey. All the Anchorage facilities are owned by the Municipality of Anchorage and since 2001 the Employer has managed these facilities under contracts which expire in 2008 and which appear to be renewable after expiration. Operationally, cooperation among the various facilities is mandated by these contracts.

Egan basically is a large convention center with varying sizes of rooms and a full service catering facility. It hosts different conventions, trade shows and similar events, including a weekly fight night during the winter season. Adjacent to Egan is a Performing Arts Center which appears to be utilized for theater, concerts and similar events. Sullivan is basically a sports arena which is also utilized for trade shows, concerts and various other events. Sullivan does not have its own facilities for catering sit down meals. When such events occur at Sullivan, the catering staff and equipment from Egan travel to Sullivan for the particular event. In addition, Sullivan does not have a license or equipment for hard liquor sales. When a promoter wishes to utilize beverages of that nature, the equipment and some personnel are provided by Egan.

B. Control over Daily Operations and Labor Relations

The daily operations at both Egan and Sullivan are largely driven by their events schedule. Most administrative functions are centrally controlled by one Human Resources Department which is located at Sullivan, and which has responsibility for all the Employer's Operations in Alaska. Penny McKibbon is the Human Resource and Financial manager for the Employer. She reports directly to Steven Lazor, SMG vice president for West Coast food and beverage operations (located in California). McKibbon is responsible for overall labor relations and human resource matters for both Egan and Sullivan, as well as the other locations in Alaska. Human Resource policies are generally governed by a corporate policy manual applicable to all Employer and SMG operations; the Employer cannot vary from SMG policies. These policies cover benefits, discipline and employee conduct. There is also one payroll and accounting department, supervised by McKibbon from her Sullivan offices. McKibbon also is the

custodian for all Employer personnel files. She also conducts new employee orientations at Sullivan.

There is one centralized payroll department for both facilities and a centralized timekeeping system that allows employees to clock in or out at either Egan or Sullivan. There is one box office facility and one security department for both facilities. All employees involved in the serving of alcohol are subject to the same corporate manual provisions as well as required to have Alaska credentials for the serving of alcoholic beverages. Beer and wine are served at both Egan and Sullivan but only Egan has a license for hard liquor drinks. As mentioned above, when Sullivan needs that ability, some personnel and equipment are transferred to Sullivan, and the Employer obtains a temporary liquor license for Sullivan. Both Sullivan and Egan use a common storage facility for extra equipment. The record reveals that the two facilities share numerous business administration policies, such as centralized ticketing and marketing.

Egan and Sullivan have their own set of managers and supervisors for each facility, including separate general managers, who each report to the same regional vice president, Steve Lazor. The record does not show if managers and supervisors from Egan interchange with their counterparts at Sullivan, e.g. for vacations or just cross training. There is some record testimony about supervisors from one location following employees to the other locations for specific events such as the Iditarod Banquet. There is also testimony that the bartending supervisors can accompany bartenders from Egan to Sullivan for hard liquor events but no specific quantification of the number of times this occurs. Similarly there is no definitive evidence of how often Sullivan supervision follows Sullivan employees to Egan.

Each employee is initially hired for either Egan or Sullivan and that location is considered their “home” for Employer purposes. Each fall, a new employee orientation includes all employees of the Employer’s Anchorage operations and is directed by McKibbon. Employees generally use employment with the Employer to supplement other jobs, school or retirement, although there is one employee who works an average in excess of 32 hours per week. Employees are verbally encouraged to make themselves available for events at other than their home location but it is not a mandatory policy. Hiring is generally done by individual department managers at Egan or Sullivan for an initial shift at the individual facility. Those individual managers also determine merit and longetivity raises. Initial starting wages appear to be dictated by the central Human Resource department but that is not entirely clear from the record.

Each individual department at Egan and Sullivan has their own call list of employees. When an event is scheduled, the department manager calls or otherwise notifies the employees on his or her list to staff the function. If the manager cannot obtain sufficient manpower through the list, they go to other departments within their home facility and then to the other facilities to request volunteers. The Egan catering department also posts schedules. However, the record does not indicate if other departments either at Egan or Sullivan post any schedules. Ultimately, new employees can be hired for an event if not enough regular employees are available. All positions are basically on-call part time positions, but if an employee does not work or declines enough opportunities, they are dropped from the calling lists. The record appears to indicate that discipline for employees is initiated by their “home” supervisors, except for egregious misconduct as defined in Employer manual. Other supervising personnel can only make note of infractions and forward that information to the appropriate home supervisor.

Employees wear essentially the same uniforms. Non-catering staff at all locations wear Employer polo shirts. Catering staff from Egan, i.e. bartenders and servers, wear what are

termed black and whites (black pants and white shirts which are supplied by the employees). The polo shirts are provided by the Employer. The catering staff wear the black and whites wherever they are working, either at Egan or Sullivan.

All Anchorage facilities have a common marketing contract and all operations are overseen by one person at the Municipality of Anchorage.

C. Employee Skill, Functions and Working Conditions

The Egan and Sullivan employees share identical skills, functions and working conditions with the exceptions noted below. Catering department employees have a somewhat different skill set or experience. Sullivan does not utilize servers for banquets, nor does it regularly use bartenders to mix hard liquor drinks. The record does indicate that some of the Sullivan employees may be capable of serving mixed drinks but there was no definitive testimony in that area. All concession employees at both locations utilize the same skills and are subject to the same corporate manual provisions. Indeed, it appears that concession employees, often working at an event not at the employee's "home" facility, need no additional training. Both groups appear to enjoy the same working conditions including compensation, hours, benefits and training.

D. Employee Interchange and Contact

There is evidence of a variety of interchange between the two facilities at issue. Typically, large events at either location may require extra personnel from the other location. However, employees are not required to accept any such call. Sullivan events which require catering are staffed by the Egan catering department. These include large events such as the Iditarod Banquet, and concerts which require food preparation only for the set up crews (the concerts themselves do not usually require the catering department, only concessions). The Employer estimates that 60-80 events a year require some employee interchange. Egan itself has about 340 events a year. However, the record does not show the numbers of employees involved in most interchanges, except for the Iditarod event which uses close to 100 Egan employees for the one event. The record also does not reveal, for instance, the total percentage of hours which involve some form of interchange. There is other testimony indicating that six to ten concession or bartending employees may also exchange for some events. While the electronic clock in system permits employees to clock in or out at either location, payroll records have to be certified by the individual department supervisor to show that the individual was in fact scheduled for a particular event. Employees are home based at the facility where they were hired. The degree of contact or interchange depends on the number of shifts an individual decides to work at either facility.

The bulk of the Egan employees are in the catering department (145 out of total of 155 Egan employees). The large events at Sullivan which require the catering department (typically three to six events per year but projected to be as high as ten events) result in the catering department moving en masse to Sullivan. The record indicates minimal, if any, participation of Sullivan employees in the large banquet functions with the possible exception of an unknown number of Sullivan employees acting as bartenders.

An Egan wait staff employee testified that he did not interact with Sullivan employees and would not be able to identify Sullivan concession or bartending employees at any given event. The record also shows that Egan banquet supervisors would not have any interaction with Sullivan employees at these large banquet events taking place at Sullivan.

E. Geographic Separation and Bargaining History

The two facilities are approximately 1.6 driving miles apart in central Anchorage. There is no local bargaining history in the Anchorage locations. The Employer, however, presented evidence that shows SMG has a practice of multi-location bargaining units in some localities where it manages multiple facilities for the same public entity. This includes operations in Miami, Florida; San Francisco, California, and New Orleans, Louisiana. The record does not show the process by which these unit determinations were reached.

III. POSITIONS OF THE PARTIES

The Petitioner seeks a unit of food and beverage employees employed at the Employer's Egan location. The Petitioner contends that the single location unit is appropriate and the record evidence in this case does not rebut that presumption.

To the contrary, the Employer contends that the record evidence rebuts the presumption of a single facility unit and that any unit found appropriate must, at a minimum, include the food and beverage employees employed at both the Egan and Sullivan locations. While the Employer recognizes the Board's single facility presumption, it argues that Egan has been effectively merged with Sullivan and the two locations are functionally integrated. The Employer further argues that the traditional criteria for making such a decision support only a two location appropriate unit.

IV. ANALYSIS

The Board has long held that a single facility unit is presumptively appropriate, unless the employees at the facility have been merged into a more comprehensive unit by bargaining history, or the facility has been so integrated with the employees in another facility as to cause the single facility unit to lose its separate identity. *Budget Rent A Car Systems*, 337 NLRB 884 (2202); Cargel*, Inc.* 336 NLRB 1114 (2001); *New Britain Transportation Co.* , 330 NLRB 397 (1999); *Centurion Auto Transport*, 329 NLRB 34 (1999); *Kendall Co.*, 184 NLRB 847 (1970); *National Cash Register Co.*, 166 NLRB 173 (1967); See also *J & L Plate, Inc.*, 310 NLRB 429 (1993).

A number of factors bear on the unit determination in a multi-location situation. Such factors include: control over daily operations and labor relations; employee skills, functions and working conditions; employee interchange or contact; bargaining history and distance between facilities. These and other factors must necessarily be weighed in resolving the unit contentions of the parties. See, for example *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *Novato Disposal Services*, 328 NLRB 820 (1999) and *R & D Trucking, Inc.*, 327 NLRB 531 (1999), both finding that the single facility presumption was rebutted; *RB Associates*, 324 NLRB 874 (1997), single facility presumption not rebutted.

With this in mind, it follows that geographic separation of plants (*Capital Bakers*, 168 NLRB 904, 905 (1968)); substantial authority of local management (*Equitable Life Assurance Society*, 192 NLRB 544 (1971)); the absence of any bargaining history on a broader basis (*Transcontinental Bus System*, 178 NLRB 712 (1969)); lack of substantial interchange or transfer of employees (*New Britain Transportation*, supra at 398) and the fact that no labor organization is seeking to represent a more comprehensive unit (*Welsh Co.* , 146 NLRB 713 (1964)) are factors customarily relied on for finding a single facility unit appropriate. See also

Bowie Hall Trucking, 290 NLRB 41 (1988); *Esco Corp.*, 298 837 (1990); and *Executive Resource Associates*, 301 NLRB 400 (1991).

Even if there are some factors supporting a multi-location unit, the appropriateness of such a unit does not establish the inappropriateness of a smaller unit. *McCoy Co.*, 151 NLRB 383, 384 (1965). Thus, although the optimum unit for collective bargaining may well be larger in scope, a union is not precluded from seeking a smaller unit when the smaller unit sought is in and of itself also appropriate for collective bargaining when viewed in light of all the circumstances. *Frisch's Big Boy Ill-Mar, Inc.*, 147 NLRB 551 (1964).

The scope of the unit sought by the Petitioner is relevant but cannot be determinative of the unit. So, when a union seeks a presumptively appropriate unit (e.g., a single facility), it is the employer's burden to rebut the presumption. *Greenhorn & O'Mara Inc.*, 326 NLRB 514 (1998)

Here, Board law establishes that the unit sought by Petitioner is presumed to be appropriate unless the Employer carries its burden of rebutting the presumption. In order to rebut the presumption, the Employer must establish that factors bearing on the unit determination support such a rebuttal. It is not sufficient that the Employer merely establish that the unit comprising the food and beverage employees at both Egan and Sullivan is the optimum or most appropriate unit. As noted above, I find that the Employer has failed to rebut the presumption. An examination of the factors and circumstances present in this case supports my finding.

With regard to control over daily operations and labor relations, it is clear that the Employer's corporate offices control significant aspects of its facilities nationwide and in Anchorage and that such control largely impacts daily operations through the implementation and enforcement of numerous policies and procedures dealing with the nature of the food and beverage employees' work and the conditions under which that work is performed. However, significant supervisory functions remain with the individual location managers, such as scheduling work, hiring new employees, determining longevity and merit wage increase, initiating serious discipline, and day to day oversight of employees' work.

With respect to the factor of employee skills, functions and working conditions, the employees at both facilities possess identical skills, perform identical functions, with the exception of the Egan catering employees discussed above, and work under nearly identical conditions.

Regarding employee interchange, there is evidence that interchange occurs on a significant number of occasions. However, the record does not reflect, for instance, the percentage of shifts or hours for which any such interchange accounts. For instance, although about 6 Sullivan based employees work at Egan for certain events, these 6 represent a small percentage of the nearly 100 Sullivan based employees. Such lack of specificity and justification has been found insufficient to rebut the single facility presumption. *New Britian Transportation Co.* supra at 398. Moreover, when the Egan catering department performs work at Sullivan, it appears that they work as a distinct operation, with little or no contact with Sullivan based employees. Thus I do not find such work to constitute the type of interchange which would overcome the single facility presumption. The Employer did present testimony that interchange is encouraged but it is entirely voluntary. In this regard, I note that interchange of employees, made at the convenience of employees, is not entitled to meaningful weight in defining the scope of a unit. *Penn Color, Inc.*, 249 NLRB 1117, 1119 (1980).

As for local bargaining history, the evidence presented by the Employer as to other corporate locations is not determinative. Initially, there was no evidence as to the process of reaching the multi-unit agreements in the other SMG locations. It is Board policy not to be bound by parties' agreements as opposed to Board determinations of an appropriate unit. See *Laboratory Corporation of America Holdings*, 341 NLRB 1079 (2004).

Finally, the relatively close (1.6 miles) distance between the two facilities is of minimal significance, given the essentially separate schedules and lack of specific, clear, evidence of employee interchange.

An examination of the above noted factors and circumstances reveals that there is extensive centralized control over administrative and personnel policies, and that employee skills, functions and working conditions are essentially identical at the two facilities.

These and other relevant factors are, however, outweighed by significant local managerial autonomy; by a lack of evidence of meaningful interchange and contact; by a lack of local bargaining history and by the fact that no labor organization seeks bargaining in a more comprehensive unit. In the end, I find that although the record evidence would comfortably support a finding that the combined unit is appropriate, it nevertheless fails to require overturning the single facility presumption.

The Board has found the single facility presumption unrebutted in similar cases. In *Bowie Hall Trucking*, 290 NLRB 41 (1988), the Board found sufficient local autonomy where the local manager conducted initial screenings for new hires and was consulted on disciplinary issues. In *Esco Corp.*, 298 NLRB 837 (1990), local autonomy consisted of a "leadman" who assigned routine duties, granted time off and scheduled vacations. In *Rental Uniform Services, Inc.*, 330 NLRB 334 (1999), the local autonomy included the granting of time off requests, the initiation of discipline, evaluations and involvement in the hiring process.

The Employer contends that a series of cases support the argument that the presumption has been overcome by the facts in this case. In particular, the Employer cited *Dattco, Inc.*, 338 NLRB 49 (2002), which is clearly distinguishable. There, the presumption was rebutted but there was also no local autonomy, which is not the case here. Rather, the bus drivers in question were centrally hired, dispatched, remotely supervised on a regular basis and were routinely mandatorily assigned runs not originating at their home base. Similarly with *Budget Rent a Car Systems*, supra and *Alamo Rent A Car*, supra, there was essentially no local autonomy. Unlike here, the local managers had no power to hire, fire ,discipline or to meaningfully impact other terms and conditions of employment. In addition there was significant, meaningful interchange and employee contact and transfers, which are not present here.

In light of the above, the record evidence, and the parties' arguments at hearing and in their briefs, I find that the Employer has failed to rebut the single facility presumption and that the single facility unit sought by petitioner is appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. Therefore I shall direct an election in the following unit of employees:

> All fulltime and part-time bartenders, concession employees, catering employees, cooks, banquet servers and dishwashers employed by the Employer and "home" based at its Egan Convention Center facility in Anchorage, Alaska, excluding all other employees, managerial employees, confidential employees, supervisors, and guards as defined in the Act.

There are approximately 155 employees in the appropriate unit.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the Unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off, if the Employee, during the prior six months, has averaged 4 hours or more per week during any 3 month period in the last 6 months[4]. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by UNITE HERE! LOCAL 878.

A. List of Voters.

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co*., 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Resident Office, 1007 W. Third Avenue, Suite 206, Anchorage, Alaska 99501-1936, on or before **May 12, 2006.** No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

B. Notice Posting Obligations

[4] The formula I have used represents a slight deviation from that set forth in *Davison-Paxon Company* 185 NLRB 21; it accounts for seasonal variations, a concern raised by the parties at the hearing.

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

DATED at Seattle, Washington, this **5th day of May 2006**.

/s/ [Richard L. Ahearn]
Richard L. Ahearn, Regional Director
National Labor Relations Board, Region 19
2948 Jackson Federal Building
915 Second Avenue
Seattle, Washington 98174